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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

PARVANEH
SOLAYMANPOUR,

Plaintiff and
Appellant,

v.

CA GLATT CENTER INC.,

Defendant and
Respondent.

B286440

(Los Angeles County
Super. Ct. No.
BC586697)

APPEAL from orders of the Superior Court of Los Angeles County, Charles F. Palmer, Judge. Dismissed in part, affirmed in part.

Parvaneh Solaymanpour, in pro. per., for Plaintiff and Appellant.

Diederich & Associates, Danielle D. Mittskus, for
Defendant and Respondent.

Plaintiff and appellant Parvaneh Solaymanpour (plaintiff) appeals from a judgment and postjudgment orders in favor of defendant and respondent CA Glatt Center, Inc., dba Pico Glatt Kosher Market (defendant). Plaintiff sued defendant for negligence and premises liability, seeking damages for burns suffered at defendant's hot food counter.¹ After the case ended in a jury verdict in favor of defendant, the court served notice of entry of judgment on both parties.² Plaintiff filed a motion for new trial, which the court denied after a hearing. One week later, plaintiff filed a motion for relief under Code of Civil Procedure section 473, subdivision

¹ Plaintiff was initially represented by counsel in the trial court. Her attorney withdrew with the court's permission 10 months before trial. Plaintiff continues to represent herself on appeal.

² Although plaintiff designated items for a clerk's transcript, many of the documents necessary for our decision on appeal were not included in the clerk's transcript. We take judicial notice of the relevant court orders, and the corresponding clerk's certificates of mailing, that plaintiff attached to her amended civil case information statement, filed with this court on January 2, 2018.

(b),³ seeking to set aside the court's earlier order denying her motion for new trial. The court denied the motion for relief, citing section 660 and its jurisdictional requirement that a court rule on a motion for a new trial within 60 days after notice of entry of judgment is served by mail.⁴ Plaintiff filed a second motion for relief, which the court also denied on the same grounds as the first. Plaintiff filed a notice of appeal 8 days later, more than 60 days after her motion for new trial was denied and more than 100 days after notice of entry of judgment.

Plaintiff argues on appeal that the trial court erred in denying her motion for new trial and incorrectly denied her motions for relief. We dismiss as untimely the portion of plaintiff's appeal challenging the order denying her new trial motion, and we affirm the orders denying both motions for relief under section 473, subdivision (b).

³ All further statutory references are to the Code of Civil Procedure unless otherwise stated.

⁴ The jurisdictional time frame for a court to rule on a motion for a new trial after mailing of the notice of entry of judgment was extended to 75 days by an amendment of section 660 effective on January 1, 2019. (Stats. 2018, ch. 317 (A.B. 2230), § 1, eff. Jan. 1, 2019.) The prior version of section 660, and its 60-day period, governs this case.

DISCUSSION

Rules of appellate review

A party who chooses to represent herself on appeal “is to be treated like any other party and is entitled to the same, but no greater consideration than other litigants and attorneys.” (*Barton v. New United Motor Manufacturing, Inc.* (1996) 43 Cal.App.4th 1200, 1210; *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1246–1247.) First, “an appealed judgment is presumed correct, and appellant bears the burden of overcoming the presumption of correctness.” (*Boyle v. CertainTeed Corp.* (2006) 137 Cal.App.4th 645, 649–650.) It is appellant’s obligation to demonstrate how the trial court erred and to provide a record from which the claimed error may be shown. (*Maria P. v. Riles* (1987) 43 Cal.3d 1281, 1295–1296; *Byars v. SCME Mortgage Bankers, Inc.* (2003) 109 Cal.App.4th 1134, 1140 [briefs must contain “appropriate references to the record, which includes providing exact page citation”].) Second, an appellant’s position on appeal must be supported by cognizable legal argument and citations to authority. (*Cahill v. San Diego Gas & Electric Co.* (2011) 194 Cal.App.4th 939, 956.) ““When an appellant fails to raise a point, or asserts it but fails to support it with reasoned argument and citations to authority, we treat the point as waived.” [Citation.] ‘We are not bound to develop appellants’ arguments for them. [Citation.] The absence of cogent legal argument or citation

to authority allows this court to treat the contention as waived.” (*Ibid.*)

Plaintiff’s appeal is untimely as to the order denying her motion for new trial

Plaintiff has waited too long to appeal the order denying her motion for new trial, and that portion of her appeal must be dismissed. (*Van Beurden Ins. Services, Inc. v. Customized Worldwide Weather Ins. Agency, Inc.* (1997) 15 Cal.4th 51, 56 “[t]he time for appealing a judgment is jurisdictional; once the deadline expires, the appellate court has no power to entertain the appeal”]; *Adaimy v. Ruhl* (2008) 160 Cal.App.4th 583, 586 (*Adaimy*) [60-day time frame for appealing from a judgment is extended by 30 days after court clerk mails a notice of entry of order denying a motion for new trial].) An order denying a motion for new trial is nonappealable. (*Walker v. Los Angeles County Metropolitan Transportation Authority* (2005) 35 Cal.4th 15, 18.) However, notices of appeal are to be liberally construed, and so we construe plaintiff’s notice as appealing from the underlying judgment. (*Id.* at p. 22.)

Rule 8.104(a) of the California Rules of Court⁵ provides in pertinent part that a notice of appeal must be filed on or before the earliest of “60 days after the superior court clerk serves on the party filing the notice of appeal a document

⁵ Further rule references are to the California Rules of Court unless otherwise stated.

entitled ‘Notice of Entry’ of judgment or a filed-endorsed copy of the judgment,” or “180 days after entry of judgment.” The rules of court also provide for an extension of the time to appeal by up to 30 days if a party seeks a new trial. (*Maroney v. Iacobsohn* (2015) 237 Cal.App.4th 473, 480, fn. 4; *Adaimy, supra*, 160 Cal.App.4th at p. 588; rule 8.108(b).) If a party “serves and files a valid notice of intention to move for a new trial,” and the court denies the motion, “the time to appeal from the judgment is extended for all parties until the earliest of” “30 days after the superior court clerk, or a party serves an order denying the motion or a notice of entry of that order” or “180 days after entry of judgment.” (Rule 8.108(b).)

Here, the court entered judgment on July 24, 2017, and the court clerk mailed notice of entry of judgment on the same date. On August 4, 2017, plaintiff filed a motion for new trial.⁶ The court heard the motion on September 13, 2017, and entered an order denying the motion on September 15, 2017. The court clerk mailed notice of entry of order on the same date. Under rule 8.104(a), plaintiff had 60 days after notice of entry of judgment was served by the clerk on July 24, 2017 to file a notice of appeal. Under rule 8.108(b), she had 30 additional days to file her appeal from September 15, 2017, the date the court served notice of entry of order denying her motion for new trial. Plaintiff did not

⁶ Defendant argues that plaintiff did not properly serve the motion for new trial. Because we find plaintiff’s appeal untimely, we need not address defendant’s argument.

file a notice of appeal until November 15, 2017, 114 days after judgment was entered and notice of entry of judgment was served, and 61 days after the court denied her motion for new trial and served notice of entry of that order. Plaintiff's appeal of the judgment and the decision denying her motion for new trial is untimely by either measure.

The trial court did not abuse its discretion in denying either of plaintiff's motions for relief under section 473

Plaintiff has timely appealed the orders denying her motions for relief, but she has not shown that the orders were an abuse of discretion. The court denied plaintiff's motions for relief under section 473 on the ground that it lost jurisdiction over the matter 60 days after notice of entry of judgment. A order denying a section 473 motion seeking relief from a judgment is an appealable order. (*Austin v. Los Angeles Unified School Dist.* (2016) 244 Cal.App.4th 918, 927, fn. 6.) We review the order for an abuse of discretion, examining whether the trial court's decision exceeds the bounds of reason. (*Id.* at p. 929.)

“Notwithstanding the broad construction afforded section 473, subdivision (b), the statute does not offer relief from mandatory deadlines deemed jurisdictional in nature. [Citations.] Thus, section 473, subdivision (b) cannot extend the time in which a party must move for a new trial, since this time limit is considered jurisdictional. [Citations.]” (*Maynard v. Brandon* (2005) 36 Cal.4th 364, 372.) “A motion for a new trial is “a new statutory proceeding,

collateral to the original proceeding” and constitutes a new action brought to set aside the judgment.’ [Citation.] Both the ‘right to move for a new trial’ and the court’s jurisdiction to hear it are creatures of statute. [Citations.] A trial court gains jurisdiction to hear such a motion only after a party files a timely notice of intent and judgment has been entered.” (*Kabran v. Sharp Memorial Hospital* (2017) 2 Cal.5th 330, 336.) “In particular, the trial court loses jurisdiction to hear a new trial motion if no notice of intent is filed within 15 days of the mailing or service of notice of entry of judgment, or within 180 days of the entry of the judgment. [Citations.] If notice *is* filed, the court loses power to rule on the motion after 60 days.” (*Id.* at p. 337; *Odd Fellows’ Sav. Bank v. Deuprey* (1884) 66 Cal. 168, 170–171 [not erroneous to deny motion to set aside order, where claimed mistake caused motion for new trial to be denied for lack of prosecution]; but see *Pollock v. Standard Oil Co.* (1967) 256 Cal.App.2d 307, 310 [finding no abuse of discretion in order granting of relief under section 473 under a “remarkable combination of circumstances” warranting such relief].)

Here, plaintiff was not able to persuade the trial court to set aside its earlier order denying her motion for new trial, and we find no abuse of discretion in the trial court’s decision. Finding no abuse of discretion, we affirm both postjudgment orders denying plaintiff’s motions for relief.

DISPOSITION

The appeal filed by plaintiff and appellant Parvaneh Solymanpour is dismissed to the extent it seeks review of the September 15, 2017 order denying her motion for new trial. The October 19, 2017 and November 7, 2017 orders denying plaintiff's motions for relief under section 473, subdivision (b), are affirmed. Costs on appeal are awarded to defendant and respondent CA Glatt Center, Inc., dba Pico Glatt Kosher Market.

MOOR, J.

We concur:

RUBIN, P.J.

KIM, J.